IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 780 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHETANBHAI MOHANBHAI KABRAWALA

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 780 of 2004

MR DHIRENDRA MEHTA for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 25-12-2003. By the said order, the petitioner is detained as a

"bootlegger" under P.A.S.A. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one criminal case registered against the petitioner under Bombay Prohibition Act. It is alleged that the petitioner was found to be in possession of 36 bottles of foreign liquor. After considering the pending case and the statement of secret witnesses aforesaid detention order was passed, which is impugned in this petition.

2) Learned advocate for the petitioner submitted that the last registered case against the petitioner is of 14-11-2003 and the detention order is passed on 25-12-2003, therefore, there is a delay of about 1 month and 10 days in passing the detention order. It is submitted that in view of the delay in passing the detention order, the order of detention is required to be set aside, as in view of the delay satisfaction of the detaining authority can be said to have been vitiated.

3) Mr.Kogje, learned AGP, submitted that over and above one registered criminal case, the detaining authority has recorded statement of two secret witnesses, whose names have not been disclosed to the petitioner, therefore, delay is sufficiently explained.

4) Learned advocate for the petitioner submitted that there is a solitary case registered against the petitioner, therefore, such case can be treated to be a case of breach of law and order but it cannot be said that the petitioner has violated public order. To substantiate his say, the learned advocate for the petitioner has relied upon the judgment rendered in the case of Sandip Omprakash Gupta Vs. State of Gujarat vide judgement reported in 2004 (1) GLR 864. In the said decision, a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned Single Judge of this Court, on the facts of that case, held that the detenu could have been dealt with under the ordinary criminal law and the order of detention passed therein, treating the petitioner as a bootlegger, was set aside. Since I am bound by the view taken by the learned Single Judge, in view of the aforesaid stand about a solitary case registered under the Bombay Prohibition Act and on the basis of the aforesaid submission about a solitary case lodged against the petitioner, which can be taken care under the ordinary criminal law, this petition is required to be allowed.

5) Even otherwise, dealing in foreign liquor itself is not sufficient for coming to the conclusion that by such act of the petitioner public health is disturbed.

6) It is not in dispute that there is a solitary case registered against the detenu, therefore, in view of the aforesaid judgment, only on the ground of a solitary case this petition is required to be allowed, as it cannot be said that this is a case of breach of public health or public order.

7) For the foregoing reasons, this petition is allowed. The order of detention dated 25-12-2003 is quashed and set aside. The detenu, Shri Chetanbhai Mohanlal Kabrawala is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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